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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,797	12/20/2001	Kenneth Brigham	22000.0106U2	9406
7590 02/18/2004			EXAMINER	
Shari J. Corin, Ph. D. NEEDLE & ROSENBERG, P.C. Suite 1200, The Candler Building 127 Peachtree Street, N.E. Atlanta, GA 30303-1811			CHEN, SHIN LIN	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/027,797	Applicant(s) BRIGHAM ET AL.	
	Examiner Shin-Lin Chen	Art Unit 1632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 36-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1 and 36-53 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim 1, drawn to a method for delivering a nucleic acid to a location that is inaccessible to direct protein delivery in an animal comprising administering a positively charged liposome associated with said nucleic acid to said animal, classified in class 435, subclass 455.
 - II. Claims 36-41, drawn to a method of inhibiting replication of a respiratory syncytial virus in a respiratory cell by delivering a nucleic acid encoding alpha1 antitrypsin to a population of cells, classified in class 514, subclass 44.
 - III. Claims 42-53, drawn to a method of reducing respiratory syncytial virus infectivity in a population of cells or inhibiting infection of a respiratory cells by a respiratory syncytial virus comprising delivering a nucleic acid molecule encoding alpha1 antitrypsin to said cells, classified in class 514, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

Groups I-III are distinct from each other because they are drawn to materially different methods that differ at least in objectives, method steps, reagents and/or dosages used, schedules used, response variables, and criteria for success. They are drawn to different scientific considerations: a method for delivering a nucleic acid to a location that is inaccessible to direct protein delivery in an animal, a method of inhibiting replication of a respiratory syncytial virus in a respiratory cell by delivering a nucleic acid encoding alpha1 antitrypsin, and a method of reducing respiratory syncytial virus infectivity in a population of cells or inhibiting infection of a respiratory cells by a respiratory syncytial virus comprising delivering said nucleic acid. Further,

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groups I and II have different classifications and require separate search. Thus, groups I-III are patentably distinct from each other.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Lin Chen whose telephone number is (571) 272-0726. The examiner can normally be reached on Monday to Friday from 9:30 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (571) 272-0804. The fax phone number for this group is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0196.

Shin-Lin Chen, Ph.D.

SHIN-LIN CHEN
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'SL Chen', located below the printed name and title.